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HIGH COURT OF CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

WRIT APPEAL NO. 27 OF 2007

APPELLANTS

1) Smt. Rajeshwari Agrawal, widow of Sirkant Agrawal.

2) Rajesh Agrawal, s/o. Late Shri S.K. Agrawal.

3) Brijesh Agrawal, s/o. Late Sri S.K. Agrawal.

4) Umesh Agrawal, s/o. late Sri S.K. Agrawal,.

5) Shivendra Agrawal, s/o. late Sri S.K. Agrawal.

All r/o. Purani Basti, Baniya Para, Raipur, CG.

Versus

RESPONDENTS

1) Central Bank of India, A nationalized Bank having its Central Office at Chhandermukhi Nariman Point, Bombay 400 021.

2) The General Manager, Central Bank of India, Central Office at Chandramukhi. Nariman Point, Bombay 400 021.

3) The Deputy General Manager, Zonal Office, Central Bank of India, 33, Netaji Subhash Road, Calcutta 700 001.

PRESENT:

Shri Raviranjan Sinha, counsel for the appellants.
Shri V.R. Tiwari, counsel for the respondents.

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ORAL ORDER
(Passed on 3rd April 2007)

The following oral order of the court was passed by H.L. Dattu, CJ.

This appeal arises out of an order dated 19-01-2006 passed by the learned Single Judge in Writ Petition No.3251/1994 and also the order dated 31-3-2006 passed in M.C.C.No.143/2006.

2) Legal representatives of one late Shrikant Agrawal were petitioners in Writ Petition No.3152/1994. While Shrikant Agrawal was alive, he had filed W.P.No.3251/1994 *inter alia* questioning the orders passed by the Disciplinary Authority and confirmed by the Appellate Authority. By those orders, the Disciplinary Authority had imposed a punishment of removal of the petitioner from services for the alleged acts of misconduct.

3) During pendency of the writ petition, Shrikant Agrawal expired and with permission of this Court his legal representatives have come on record and prosecuted the writ petition. The main contention that was canvassed in the writ petition was with regard to jurisdiction of one Shri S.R. Narayanan who was working as Deputy General Manager, was the Disciplinary Authority of Central Bank of India.

4) Since the petitioners' learned counsel was not in a position to place any regulation to support his contention, learned Single Judge had rejected the writ petition. Thereafter, the legal representatives of late Shrikant Agrawal had filed a review petition in M.C.C.No.143/2006, that was also rejected by the learned Single Judge on the ground that by filing a review petition, petitioners cannot re-argue the matter. It is

correctness or otherwise of the above two orders, ~~they~~ are subject matters of this writ appeal.

5) Learned counsel appearing for the appellants strenuously contended before this Court that the learned Single Judge was not justified in rejecting the writ petition. According to learned counsel for the appellants, Shri P.R. Sethi who was Deputy General Manager when enquiry proceedings were held and completed, the only person who could have passed an order removing late Shrikant Agrawal from service. In support of that contention, the reference is made to the guidelines issued by the Central Bank of India.

6) According to learned counsel for the appellants, those guidelines are mandatory and, therefore, the same requires to be followed by the employees/officers of the Bank. In aid of his submission, learned counsel has relied upon certain observations made by Gujrat High Court in the mater of **Himatgiri Mohangiri Vs. Shri Pavari K.S. and/or his successor in office, Inspector General of Police, Ahmedabad and another,** reported in **1977 (2) SLR 623.**

7) Per contra, Shri V.R. Tiwari, learned counsel appearing for the respondents Bank would submit that the guidelines issued by the Bank are only directory and mandatory and if some deviation is there from the guidelines, that cannot be taken advantage of by a delinquent officer. In aid of his submission, he has relied upon the observations made by the Hon'ble the Apex Court in the matter of **Union of India and others Vs. R.S. Saini,** reported in **1991 Supp(2) SCC 151.** In the said decision, the Court has observed as under:

> "There is nothing mandatory about the terms of this memorandum. The very language of the memorandum makes it clear that it is only a guideline to ensure that disciplinary proceedings are completed as expeditiously as possible. It also suggests that where the disciplinary officer feels that it is not possible to adhere to the time-limit, a report should be made regarding the additional period needed for completing the same. That has also not been done in this case. But this itself indicates that the three months limit indicated is relaxable if the circumstances justify it. It cannot be treated as a condition, non-compliance with which will invalidate the order of punishment of the disciplinary authority. It is very difficult to construe this memorandum as imposing a rigid time-limit for the imposition of the order of the punishment as held by the Tribunal."

8) In the instant case, the Disciplinary Authority of the respondents Bank by issuing a charge memo had appointed an Enquiry Officer to enquire into the allegations made in the charge memo. At the time of initiating the enquiry proceedings, one Shri Arjun Bhaya was the Deputy General Manager and also was the Disciplinary Authority of Jaithari Branch (Sahdol Region).

9) The Enquiry Officer after holding an enquiry had submitted his report, the list of documents marked in the enquiry and the statements of witnesses before one Shri P.R. Sethi, who was then working as Deputy General Manager of the aforesaid region and in that capacity was the Disciplinary Authority.

10) If so happened in the present case, that Shri P.R. Sethi was also transferred by an order dated 28-4-1992 and in his place one Shri S.R. Narayanan was posted as Deputy General Manager. In that capacity he was the Disciplinary Authority of the Branches of the Bank in Sahdol Region. It is that officer who had passed the impugned order terminating the services of the petitioner from services of the Bank. It is that order which was questioned by late Shrikant Agrawal before this Court.

11) In order to appreciate the contentions canvassed by learned counsel for the appellants, it would be useful to refer to the guidelines issued by the Bank. The same reads as under.

> "The Disciplinary Authority has only to consider the findings of the Enquiry Officer, arrive at a decision and pass his final orders. Hence, (i) In cases where the findings of the Enquiry Officer have already been submitted to the Disciplinary Authority, there is no need to change the Disciplinary Authority. (ii) If the findings have nt been submitted to the Disciplinary Authority at the time of his transfer, in such cases the succeeding Chief Manager/Asstt. General Manager should adopt the charge-sheet, appointment of Enquiry Officer/Presenting Officer etc. by issuing suitable notification and act as Disciplinary Authority."

12) A reading of the aforesaid guidelines issued by the Bank would demonstrate two things; firstly if enquiry proceedings have been completed and those enquiry reports have been submitted by the Enquiry Officer to the Disciplinary Authority, there is no need to change

the Disciplinary Authority, that only means that in a situation of the aforesaid nature, the Bank need not to change the Enquiry Officer, but in the present case, Mr. P.R. Sethi who was Deputy General Manager was transferred and in his place one Shri S.R. Narayanan was appointed as Deputy General Manager, in that capacity of Deputy General Manager he is also the Disciplinary Authority of the respondents Bank in the Sahdol Region. Therefore, no order is passed by any superior authority to change the Disciplinary Authority, therefore, assuming the guidelines would come to assist to the appellants, even then also because of the language implied in the guidelines, appellants cannot get any relief because no superior authority has passed any order changing the Disciplinary Authority. Even otherwise also, late Shrikant Agrawal has no vested right or any legal right to submit that it is only P.R. Sethi who was Deputy General Manager before he was transferred from Shadol Region to pass an order on the report of the Enquiry Officer. Even, Hon'ble the Apex Court in the matter of **R.S Saini** (supra), has observed that the guidelines issued by the Bank are not mandatory in nature and only directory.

13) In view of the above, in our opinion, learned Single Judge was justified in rejecting the writ petition but also review petition filed by the legal representatives of late Shrikant Agrawal, In that view of the matter no interference is called for. Accordingly, writ appeal requires to be and is accordingly rejected. Ordered accordingly.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge